



RURAL COUNTY REPRESENTATIVES  
OF CALIFORNIA

March 28, 2019

Ms. Carla Peterman  
Chair, Commission on Catastrophic Wildfire  
Cost and Recovery  
Governor's Office of Planning and Research  
1400 Tenth St.  
Sacramento, CA 95814

Dear Chair Peterman:

On behalf of the Rural County Representatives of California (RCRC), I am writing to offer several recommendations related to wildfire, utilities, and forest management germane to the Commission on Catastrophic Wildfire Cost and Recovery (Commission). RCRC is an association of thirty-six rural California counties, and the RCRC Board of Directors is comprised of elected supervisors from those member counties.

RCRC member counties contain much of California's forested lands, including more than 70 percent of the State's national forest lands. Wildfire risk is no longer just a concern in our remote, rural areas, but is becoming a wider public safety concern as the wildland urban interface spreads over larger areas of the State and beyond forested areas. Recent years have shown that a combination of wildfire prevention, forest management, fuels treatment, and emergency preparedness measures will be vital to California's communities in the wildland urban interface in order to mitigate the type of catastrophic damage demonstrated by the Camp, Woolsey, and Carr Fires, to name just a few.

Senate Bill 901 (Dodd, 2018) was a landmark for bipartisan legislation to enable forest restoration, fuels treatment, biomass utilization, and many other components that need to be in place for California to realize the entire life cycle of forest and wildland management for a healthier, more resilient state. The bill not only committed an unprecedented \$1 billion from the Greenhouse Gas Reduction Fund to forest health programs but provided a number of statutory changes to enable more immediate attention to the health and restoration needs of our forests, as well as forming the Commission on Catastrophic Wildfire Cost and Recovery. As a product of SB 901, RCRC offers the following recommendations to the Commission.

#### Wildfire Prevention and Forest Health

RCRC is a long-time advocate for enhanced forest management, watershed restoration, and wildfire prevention activities in California. In fact, it is our strong belief that at least some of the devastating wildfire activity we have seen in the past decade could have been prevented had both state and federal land managers acted more expeditiously to

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improve the health and resilience of California's forests and wildlands, particularly in light of our changing climate and years of extreme drought conditions. While we absolutely support short-term actions to safeguard communities from wildfire such as enhanced defensible space inspections, home hardening programs and community fuel breaks, we cannot lose sight of the long term need to make our forests and wildlands more resilient to wildfire as well.

Not only are wildfires a threat to public safety, but they are an imminent threat to the State's greenhouse gas (GHG) emissions reduction and carbon sequestration goals. The California Air Resources Board (CARB) estimates that wildfires contribute more than half of California's annual black carbon emissions, a number that will continue to increase as the State's forests continue to burn.<sup>1</sup> As we continue to see expanded wildfires into more urbanized areas, reduction of GHG and other criteria pollutant emissions from wildfires will become even more vital to public health.

To address GHG emissions from wildfire, RCRC believes that the goals outlined in the State's Forest Carbon Plan should be codified as a commitment to the management of the State's forests and wildlands. RCRC was a member of the Forest Climate Action Team and contributed to the development of the Forest Carbon Plan. While we would have liked to have seen even more advanced goals for the management of our state's forested lands, we believe that the policies and efforts outlined in the final Forest Carbon Plan can truly change the landscape of our wildlands if state and federal land managers continue to work together to meet those goals.

CARB should also include natural and working lands in its next Assembly Bill 32 (Nuñez, 2006) Scoping Plan, another component RCRC has been asking for since the bill was signed into law. CARB has resisted including greenhouse gas emissions from wildfire in its statewide carbon inventory and Scoping Plan under the guise that wildfire emissions aren't anthropogenic. In fact, CARB, along with the California Environmental Protection Agency, California Natural Resources Agency, California Department of Food and Agriculture, and Strategic Growth Council, released a draft California 2030 Natural and Working Lands Climate Change Implementation Plan still without plans to incorporate the forest and wildlands sector into the larger AB 32 scope -- despite estimating a possible 137 million metric tons of greenhouse gas emissions reductions from the sector by 2030 depending on management practices used.<sup>2</sup>

California must also continue to work toward a collaborative relationship with federal land managers, who control more than 40 percent of the State's land mass. Regardless of political differences, the State's first consideration must be the welfare of its residents living near federally managed lands. While we understand that USDA Forest Service (USFS) lands are in dire need of better management and fuels treatment, it behooves California to work cooperatively with both the USFS and other federal agencies such as the Bureau of Land

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<sup>1</sup> California Air Resources Board. (2015) Draft Short-Lived Climate Pollutant Reduction Strategy, Appendix A: California SLCP Emissions. Retrieved from <http://www.arb.ca.gov/cc/shortlived/2015appendixa.pdf>.

<sup>2</sup> "California 2030 Natural and Working Lands Climate Change Implementation Plan." Page 12, California Environmental Protection Agency, et al., <https://www.arb.ca.gov/cc/natandworkinglands/draft-nwl-ip-1.7.19.pdf>

Management to enter into Good Neighbor Authority agreements to help ensure that work is done on those lands to mitigate wildfire risk and minimize harm to California residents.

**Recommendations: California cannot implement short-term wildfire protection measures at the expense of long-term forest health and resilience activities. The State should codify the goals in the Forest Carbon Plan, and the California Air Resources Board should include natural and working lands in its next AB 32 Scoping Plan. California must work collaboratively with federal land managers, including increasing the use of Good Neighbor Authority to reduce fuel loads on federal lands.**

#### Land Use Restrictions in the Wildland Urban Interface

One of the most common topics so far in 2019 surrounding wildfire has been whether local governments should be allowed to develop in the wildland urban interface (WUI), and if so, what restrictions should be placed on land use planning in the future. Many rural counties have been making thoughtful decisions with regard to planning in the WUI over the past decade of increasingly devastating wildfires and adhere very carefully to state building standards and planning guidelines in fire prone areas. However, many counties realize the need for even more consideration to wildfire risk as climate change increases the plausibility of more frequent ignitions in the future and are willing to continue working with the State on how to make those decisions with maximum public safety in mind.

However, restrictions or even a moratorium on building in the WUI are infeasible for a few reasons, which is why counties are committed to continuing smart development. First, disallowing building on privately owned property would be tantamount to a taking under eminent domain. Property owners have a reasonable expectation that they will be able to develop those lands in the future, and without extreme changes to eminent domain statute, eliminating those development rights is a tenuous proposal at best. RCRC recommends working with local governments on how to continue to refine development in the WUI to better protect public safety by ensuring community fire protection elements are built into any new developments.

Second, California remains in desperate need of new housing, and local governments are under strict mandates to develop and provide affordable housing units across the State. Under the Regional Housing Needs Assessment (RHNA), local governments are regionally mandated to develop specific numbers of housing units and are currently facing strict penalties from the Administration if these requirements aren't met—up to and including withholding of vital Senate Bill 1 fuel tax funding for maintenance of roads and infrastructure. Even though much discussion has centered around stopping development in the WUI, those leading the charge on housing requirements have shown little to no appetite for reallocating RHNA units within regions in the WUI. Therefore, even in the most fire-prone areas, we still have strict requirements in place for housing units that must be built under penalty for not meeting RHNA requirements. For example, Paradise, California, which was devastated by the 2018 Camp Fire, currently has a RHNA allocation number of 800 units. If we are not allowed to shift those units elsewhere within the same region, Butte County will be obligated to provide 800 additional housing units over and above the housing that currently needs to be rebuilt for displaced residents from the fire. Other wildfire-prone areas in the WUI are subject to similar RHNA requirements and are prohibited from shifting those units to less fire-prone areas.

Finally, we must remember that not all communities in the WUI were developed during the current wildfire-prone condition of our state's forests and wildlands. Many of these communities, particularly where the homes are in intermix areas, are surrounded by forests and wildlands that have been mismanaged under outdated ideas of how these lands should be managed. These lands are overly dense due to decades of misunderstanding good fire versus bad fire on the landscape, as well universal confusion over what a truly healthy forest needs to remain resilient to wildfire. In these older communities, local governments now face the funding challenges of ensuring adequate ingress and egress in the event of a wildfire as well as establishing community fire breaks and helping enforce state defensible space mandates while we all work together on making our forests more resilient to fire.

**Recommendation: RCRC recommends working with local governments to establish best practices on development in the WUI to protect public safety by ensuring community fire protection elements in any new developments. The State must resolve housing requirements in the WUI and allow local governments to shift units to less fire-prone areas within the same region. RCRC also recommends funding for local governments to address ingress/egress issues for older developments.**

#### Homeowners Insurance Cancellations and Non-Renewals in Wildfire Risk Areas

Homeowners' insurance cancellations and nonrenewals have been increasing in areas impacted by tree mortality and wildfire risk in recent years, even for those property owners who employ wildfire mitigation techniques to "fire harden" their homes. Even when homeowners are able to find alternate coverage, many have reported that they are not able to find adequate insurance to cover the value of their homes and property or cannot afford the coverage long-term because of the cost. Homeowners that own their homes outright are often choosing to go without insurance coverage to avoid the high cost of maintaining a policy in the WUI.

In order to seek a collaborative, consensus solution to the fire insurance problem, RCRC actively participated in the Insurance Subgroup formed under the Tree Mortality Task Force for several months to attempt to work with the insurance industry and policyholder advocates. While industry representatives were present and participated in the group, little progress was made toward any real compromise to help alleviate the difficulties homeowners are facing in high wildfire risk areas. The group ended when the Task Force converted in June 2018 to the Forest Management Task Force and a similar forum has yet to be established to endeavor to work through these issues between policyholders and the industry. The subgroup did, however, identify potential issues with the models used by insurers to identify wildfire risk, as well as difficulties homeowners might face in certain socioeconomically disadvantaged areas affording policies provided by the State's FAIR Plan.

In the meantime, while RCRC member counties have been presented with anecdotal evidence of this insurance shrinkage for several years in the wake of the last decade of catastrophic wildfires, the California Department of Insurance (CDI) studied homeowners insurance cancellations and non-renewals at the behest of the Tree Mortality Task Force and released a report in December 2017 entitled, "The Availability and Affordability of Coverage for Wildfire Loss in Residential Property Insurance in the Wildland-Urban Interface and Other High-Risk Areas of California: CDI Summary and Proposed Solutions" which verified the increased difficulties for homeowners in the WUI to find insurance coverage.

Among other things, the CDI report contained findings that several major insurers had been pulling back from writing new policies in the WUI, and while some of those customers were able to find other insurance, many had to resort to the State's FAIR Plan and/or the surplus-lines market to find insurance coverage. The report also found that insurance premiums and surcharges have increased significantly in high wildfire risk areas, and that while most insurance carriers utilize fire risk models to assess premiums, there are no specific statutory standards in place to ensure the models' accuracy or reliability in rating and underwriting of homeowners' insurance. Unfortunately, there is no mechanism in place for consumers to appeal a wildfire risk model score to avoid a higher premium, even if the homeowner has done due diligence with defensible space and home hardening.

The biggest issue currently is that the insurance industry continues to avoid working with policyholders to address cancelations, non-renewals, and skyrocketing premiums in high wildfire risk area. Now, in the wake of the latest round of massive wildfires in 2018, we have seen evidence that policyholders are not only being canceled and non-renewed, but that those who have experienced losses were underinsured or are having difficulties with some insurance companies in communicating with adjustors to receive their compensation. While RCRC and our member counties have continually reached out to the industry, we continue to feel resistance to any change or compromise that would help solve some of the ongoing issues facing policyholders in the WUI.

The CDI report offered several recommendations for possible solutions to some of the issues facing policyholders in the WUI; most notably, a legislative framework that would do the following:

- Offer homeowners' insurance in the WUI if the insured conducts specific wildfire mitigation, but also permit the insurer to avoid the requirement of offering homeowners' insurance in the WUI if the insurer instead offers a "difference in conditions" policy or a "premises liability" policy;
- Offer a mitigation premium credit for those property owners that conduct proper mitigation;
- Obtain approval for wildfire-risk models used in rating or underwriting;
- Allow for an appeal process before an adverse decision is finalized; and
- Stabilize the rating structure in order to ensure that homeowners' insurance rates and premiums are adequate, but not excessive, for the true wildfire risk.<sup>3</sup>

RCRC supported CDI's recommendations, and would advise the Commission to thoroughly vet the report for potential legislative recommendations. RCRC would also recommend that CDI convene a working group with policyholder advocates, local governments and the insurance industry to explore whether solutions can be agreed upon without legislative action.

**Recommendation: RCRC recommends a thorough vetting of the solutions proposed in the December 2017 CDI report for potential additional legislative action.**

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<sup>3</sup> "The Availability and Affordability of Coverage for Wildfire Loss in Residential Property Insurance in the Wildland-Urban Interface and Other High-Risk Areas of California: CDI Summary and Proposed Solutions." Page 3, California Department of Insurance, December 2017, <http://www.insurance.ca.gov/0400-news/0100-press-releases/2018/upload/nr002-2018AvailabilityandAffordabilityofWildfireCoverage.pdf>

**CDI should convene a working group with insurance policyholder advocates, local governments and the insurance industry to explore potential solutions that can be agreed upon between all parties.**

#### Inverse Condemnation Reform for Investor-Owned Utilities

While RCRC sympathizes with the current fiscal calamity of certain investor-owned utilities (IOUs), particularly in the wake of the latest round of major wildfire investigations such as the Thomas Fire and the fires related to the Tubbs Fire, RCRC strongly opposes any reform or relief of the IOUs' liability under inverse condemnation statute. Local governments are also subject to inverse condemnation and must face the entirety of the liability when they cause damage to private property in the course of providing a public service. In the case of wildfires such as the Camp Fire, not only could negligence by IOUs have caused property damage, but potentially the deaths of 86 people in Butte County if they are found responsible for igniting the blaze.

RCRC fully recognizes the need of the State to explore financial avenues for keeping the IOUs whole, especially in the wake of the bankruptcy filing by the Pacific Gas and Electric Company earlier this year. However, wildfire victims should continue to have the ability to seek restitution for their suffering through inverse condemnation, and whatever method the State uses to mitigate the financial hardship on the IOUs should have as little impact on ratepayers as possible.

**Recommendation: IOUs should be given no relief from their liability under inverse condemnation statute.**

#### Investor-Owned Utilities Wildfire Mitigation Plans

RCRC has a broad interest in the implementation of SB 901, including investor-owned utility's (IOUs) Wildfire Mitigation Plans (WMPs). Generally, in our view the Legislature did not intend to guarantee cost recovery to ratepayers for WMP compliance. The only appropriate venue to thoroughly vet impacts on ratepayers is through a General Rate Case Proceeding. Any action recommended by the Commission should be mindful of ratepayers and not bear a disproportionate impact on non-coastal areas of the State. Rural and Central Valley residents have borne a disproportionate burden of higher electricity rates than their urban counterparts and have lived with the impacts of poor IOU regulatory compliance, such as underwhelming vegetation management efforts purported to minimize wildfire ignitions, minimal undergrounding of distribution lines in high fire threat districts, and unsophisticated roll-outs of Public Safety Power Shut-Offs or de-energization events.

In addition to system hardening for IOUs, we urge the Commission to recommend telecommunications companies to similarly ensure public safety by undergoing system hardening efforts and completing a WMP. Fire-prone communities should rest assured that they will receive emergency evacuation orders should a catastrophic wildfire ignite. Unfortunately, telecommunications went completely dark when the Camp Fire broke out in Butte County, ultimately claiming 86 lives—the deadliest fire in California's history. Rural counties are heavily reliant upon landlines and significantly disadvantaged by inadequate telecommunications coverage, including expansive areas of under- and unserved broadband connectivity. These gaps are exacerbated by wildfire emergencies when there are no communication redundancies in place to assist elderly, rural populations to reach safety.

**Recommendation: Ratepayer impacts should be vetted through General Rate Case Proceedings and should not disproportionately impact non-coastal areas of the State. Telecommunications companies should also undergo system hardening efforts to ensure communications systems remain operable during emergencies.**

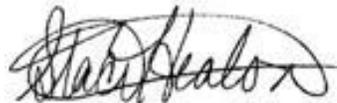
Commission Meeting Dates

While RCRC commends the Commission for holding meetings outside of Sacramento, the dates have been in conflict with important Legislative activities on the same topic. For example, the February 25, 2019 meeting took place on the same day as a joint hearing by the Assembly Natural Resources Committee and the Assembly Local Government Committee on improving fire prevention in California. The March 13, 2019 meeting was in direct conflict with a joint hearing by the Senate Natural Resources and Water Committee and the Senate Governance and Finances Committee on future development in fire prone areas. Finally, the April 3, 2019 will conflict with the Senate Rules Committee confirmation hearing of Chief Thomas Porter as the next Director of the California Department of Forestry and Fire Protection. While we realize that it is nearly impossible to avoid every conflict, it is extremely difficult for small entities that want to engage in the Commission's process while also engaging with these Legislative activities.

**Recommendation: Commission meetings should be held on Fridays to enable and encourage greater public participation and avoid conflicts with the Legislature on similar subject matter.**

RCRC appreciates your consideration of our comments and recommendations. Please do not hesitate to contact me with any questions or concerns you may have.

Sincerely,



STACI HEATON  
Regulatory Affairs Advocate

cc: The Honorable Gavin Newsom, Governor, State of California  
The Honorable Ricardo Lara, California Insurance Commissioner, California  
Department of Insurance  
Wade Crowfoot, Secretary, California Natural Resources Agency  
Jared Blumenfeld, Secretary, California Environmental Protection Agency  
Members of the Commission on Catastrophic Wildfire Cost and Recovery